87-1488

Supreme Court, U.S.
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No

In the Supreme Court
of the
United States

October Term, 1987

Dr. Lincoln Teng,
Petitioner,
vs.
Alabama Agriculture and Mechanical
University (be referred as A&M Univ
or the University),
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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Questions Presented

1. Whether Defendant University had infringed the Fourteenth Amendment rights of Petitioner, Teng?--evidence of Resolution for Teng's Tenure Attainment will show multi-stage effect.
2. Whether Defendant University had breached its employment contract of July 1977 for Teng?--relevant Alabama State Tenure Law and University regu--lations for Teng's Tenure attainment.
3. Whether Defendant University had violated the First Amendment Rights of Petitioner, in terminating his Contract by a request from Chairman, Saha who reacted to faculty's complaint with a proposal for election of Chairman, with discriminatory treatment of Oriental

American faculty, including Saha's tort actions against Teng?--Concrete evidential proofs for altruism and prominence (Oriental American, esp. Teng) Vs. malicious tort actions by Saha.

4. Whether Lower Court erred in rendering the Judgment with distorted findings of fact, and dogmatic biased conclusions of law?--proof with truthful findings of fact and just applications of law.

5. Whether Appeals Court erred in affirming lower court's biased decision and in denying the Petition for Rehearing?--full proof of Appeals Court's total falsity in applying the Rule 25, as mandated in the order of July 2, and August 27, 1987. (Tab.57; App.VI), a and sharp

contradiction to the January 4, 1986 Judgment in reversing district Court dismissal with prudent analysis in just applications of law (Tab.25; et al, App.IV.)

LISTING OF PARTIES

All parties to the proceeding in the court whose judgement is sought to be reviewed are as follows:

Lincoln Teng -- Plantiff-Petitioner;

Alabama Agricultural and Mechanical University, R.D. Morrison, as President, K. Saha, as Department Chariman, J.H Hicks, as Vice President, all of said University -- Defendants - Appellees,

Only Alabama Agricultural and Mechanical University is considered by the Petitioner herein to be the interested party Respondent.

PLAINTIFF'S PETITION FOR WRIT
OF CERTIORARI

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Section I. Preliminary Pleadings

(a)Jurisdiction: The jurisdiction is invoked under Title 42 USC, Sec. 1983, the Civil Rights Act of 1871.

(b)Constitutional Provisions Involved

1.Amendment I: " Freedom of religion, speech, and press; peaceful assemblage; petition of grievances "

2.Amendment XIV:"Citizenship; Privileges and Immunities; Due process; Equal protection; Apportionment representation; Disqualification of officers; Public debt; Enforcement"

(c)All Parties having an interest in the case: They are as shown in the caption Lincoln Teng and Alabama A&M University; there is no other litigation for these parties in court.

(d) Relevant Laws, Regulations, and University Employment contract:

1.Alabama state laws:Alabama Code, Sec. 16-49-23(1975), vesting in Board of Trustees the power of "hire and fire", the State Tenure Law requires 3-year

probation only.

2. University Regulations on Tenure (pp.15-16, University handbook, 1975ed, PL.Exh2; 1981 ed., in PL Exh.14)

(i) Element 1: Chairman's request must be endorsed by Dean (This was relaxed in 1981 ed. which can be applied to prior contracts only at no less terms).

(ii) Element 2: Contract is automatically renewed at no less terms annually on April 1, when notice of termination is not served by that day (1981 ed.has no change).

(iii) Element 3: The 5-year probation limit can be extended conditionally (1981 ed. has no change).

3. University Employment Contract of 1977 for Teng (PL. Exh. 1): It is clearly stated in the contract*, first paragraph, that "the appointment is under, and subject to the rules, orders, and

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*Ref. Williston on contract

regulations of the State Board of Education." Therefore, the State Tenure Law requiring 3-year probation prevails. (Thus,Teng's Tenure was warranted by May 1980). "From 1975, the State Board of Education was replaced by Board of Trustees, as testified by Morrison." If it was an error for having not changed accordingly in the contract, then it must take the effect for Teng's tenure. Also, the Board of Trustees is the sole authority to hire and fire. Then, University's action of terminating Teng's contract was without the Board's approval, hence not legal.(Ref.Williston [11])

(e) Opinions Below:

1. District Court Opinions: The District Court's order of March 25, 1985 contained opinions (Tab.18-19; App.III) of Dismissal with Leave for Plaintiff to amend. The Amendment of March 21, 1985

was submitted with Dean's Affidavit of September 24, 1984 (Tab.20;App.VII) which evidently was obscured or ignored by judge's April 3, 1985 order in affirming his March 25, 1985 order, with brief opinion (Tab.21;App.III). As for the trial transcript, Judge had not issued opinions. But the transcript content had been treated with delineated analysis in prior Appeals and Petition Briefs to Appeals Court, revealing errors, distortion, and caprice of the lower court.

2. Appeals Court Opinions: The January 4, 1986 Judgment was prudently considered with just applications of law, being summarized as follows:(i) Affirmed the dismissal for each agent of the University as Defendant. (ii) Reversed the dismissal of the Complaint against Defendant-University for violating Teng's

civil rights under 42 U.S.C. Sect. 1983, in particular, his Constitutional Rights under Fourteenth Amendment, citing cases, Parratt vs. Taylor [9], Conley vs.Gibson [5], Marrero vs. City of Hialeah [8], Sullivan vs. School Board of Pinellas County.[3]

Judge Said: "When Teng proves his tenure attainment, he is entitled for recovering of his property interest and prompt relief". It was further advised, "...Court should accept as true the factual allegations in his complaint; together with reasonable inferences as may be drawn therefrom in his favor." (iii) "..Tort actions by Saha are regarded non- constitutional, Saha's liability is dismissed along with other individual members of the alleged Defendants', except in their capacity-responsibility as agents of the University". (iv) "University's discriminatory practice against Oriental American faculty members should be considered. However, no opinion ever issued in all court mandates or orders other than the above mentioned decree". As for tort actions mainly by Saha, the Petitioner respects Judges' regard as unconstitutional, except the liability/ responsibility in an official capacity. Petitioner pleads that such a liability

shall be enforced by law, especially when its motive and effect is malicious. Specifically, Saha has been premeditating since 1980 in discriminatorily undermining this senior Oriental American faculty member's retiring career with personal hatred, and as chairman, in over-reacting to faculty's complaint with a proposal for election.

(f)Court Files Classification: There are three categories of files; namely:

1. Court Proceedings File, containing 57 Tabs, labeled as Tab.1, through Tab.57 to refer to:

2. Exhibits File, containing three (3) groups, namely, Plaintiff, Defendant, and Court Exhibits.

To facilitate reviewing and/or retrieving in the files, it is provided in Appendix II, the Listings of Exhibits & Annotations, each exhibit has an ordinal

Exh.# to refer to, and the Listing of Proceedings File containing Tab. 1-57, some with descriptions as needed.

3. Transcript and Deposition File, i.e. Lower Court's Transcript of Findings of Fact and Conclusion of Law (TffCL) and V.P. Hick's Deposition.

In short, these three documents are the main transmission of information providing excellent document control of the case. They are prepared to supplement the Table of Content and Table of Authorities so as to help control the entire file and retrieve any one piece of information from it for quick referencing.

Section II Statment of the Case

(a)Prior Proceedings of the Case: The case was initially caused by Defendant University's action in withdrawing its already designated Hearing for Plaintiff-Petitioner, in May 1983, whose teaching contract was terminated at the end of six (6) years of service without due process (PL.Exh.8,9&12;App.II). The complaint was first filed in U.S. District Court in March 1984 under 42 USC Sec. 1983 in claiming for the Fourteenth and First Amendment rights being infringed by Defendant University. Apparently without reviewing the later part of Plaintiff's pleadings, the court dismissed the case with prejudice by orders of March 25 and April 3, 1985 (App.III;Tab 18-19) (Which Judge signed "Done and Ordered this 22nd day of April, 1985," i.e. 19 days after the order of April 3, 1985) Plaintiff-

Petitioner appealed to the Eleventh Circuit on June 30, 1985 (No. 85-7289 became 86-7493) and received a Reversal of the lower Court's Dismissal of the Complaint against Defendant University, excluding its agents individually, dated January 4, 1986. (Tab.25, App.IV; Sect.1(e), Opinion Below, herein above.) However, Plaintiff altruistically submitted the claim for compensation on First Amendment Violations, leaving Saha's tort actions unliable at the Hearing. A Defendant University's agent, Saha, who was designated as respondent in the University hearing (set for June 1983) had not even appeared in the trial of May 1985.

On May 30, 1986, Court ruled with distorted findings of fact and pre-determined conclusions of law against Petitioner's cause (Tab.50; App.V), The

Motion for Reconsideration was denied immediately upon its submission, June 12, 1986 (Tab.55). For a second time, the Appeal of December 14, 1986 was submitted to Eleventh Circuit Court. Contradicting to the January 4, 1986 decision, Appeals Court Affirmed lower Court's decision on July 2, 1987 citing rule 25; and also denied Petition for Rehearing in the August 27, 1987 order (Tab.57;App.VI), all with no opinions issued. Instant Petition for Writ of Certiorari is compellingly instigated by the Appeals Court's Denial. Supreme Justice Steven's order granting time to file Petition is depicted in Appendix VIII.

Section III Truthful Findings of Fact & Just Application of Law

(a)An Extract of Dean, Dr. Jenkins' Affidavit, Paragraph A-1 through A-12 (Tab. 20; et al App.VII)

A-1: Self - introduction

A-2: Stating relative positions

A-3: "...Dr. Saha chastised Dr. Teng and each occasion Dr. Teng defended, following grievance procedure."

A-4: "In February 1982, Saha requested that I request Frazier, V.P., Teng be terminated at the end of the 1982 Spring semester. I did not agree with Dr. Saha. By letter dated February 24, 1982, Saha did write V.P. Frazier requesting Teng's contract be terminated. My signature appears on this letter over my name as having reviewed it, but I did not encircle the word "approved" and I do not know who circled it. I did not approve Dr. Saha's request. A letter from Dr. Frazier Dated March 22, 1982 to Teng advising Teng that it was the intent not to renew his contract after May 1983. I was not in any way consulted on this matter by Frazier. Saha convinced Dr. Frazier to go along..."-- in effect, Saha's first

request failed; Teng's Probation extended, revealing evidence for forgery committed by none but Saha, totally invalidated all universitys' actions against Teng.

A-5"This was not the only time I had disagreed with Saha regarding Teng's abilities. Dr. Teng holds three (3) Masters Degrees and a Ph.D;...Saha only assigned him basic level courses rather than the higher level courses. Teng was qualified capable.."--In fact, Teng had taught those courses during 1977-80; most good programmers from A&M working in Huntsville were Teng's students.

A-6"...Saha's faculty evaluation given to Teng...<u>not all justifiable or fair. Teng usually exercised his right to respond</u> to these criticisms and <u>Saha reacted in a nonprofessional</u> and <u>resentful manner each time.</u> Saha's criticisms were personal "criticisms" of Teng not related to his employment...."

A-7"In my capacity as Dean, I often have received complaints..,about August 1983..that Dr. Saha be replaced as Chairman... .Since then the Department has been transferred to School of Arts and Sciences, ..."

---President Morrison was manipulated by Saha, out of legitimate order.

A-8 "On or about March 10, 1983, Dr. Saha requested me to endorse a letter addressed to Dr. J.H Hicks again requesting Teng's Contract termination. I sent the letter back to Dr. Saha without my signature, informing him that I did not interpret Dr. Frazier's letter as meaning Teng would automatically be terminated (1983 Spring Semester faculty evaluation included Dr. Teng's). Saha then sent the letter to V.P. Hicks who informed Saha that he would not honor his letter without the Dean's signature. Saha then proceeded to take the matter directly to Morrison, President of A&M."--This second request by Saha was bluntly refuted by Dean, also V.P. Hicks; Dean noticed forging evidence in early March 1982, thus would not sign his name. On the

other hand, Saha designed the letter without "approved" or "disapproved" to avoid forging encircling.

A-9 "Saha somehow or other convinced President Morrison to interpret the March 22, 1982 letter to mean that Teng was to be terminated. Dr. Morrison called me and Dr. Hicks to his office and asked Dr. Hicks to bring along Teng's transcripts. Dr. Morrison observed that some grades were handwritten rather than typed. Dr. Morrison told me to tell Dr. Teng that he should have official copies of his transcript sent to the Vice President of Academic Affairs immediately. Saha had evidently accused Teng of having made changes to his transcript. I requested Dr. Teng to get these transcripts sent directly to Vice President Hick's office. I later was informed that this had been done."--This is the true inside fact of Saha's Transcript conspiracy against Teng, which Morrison denied in total.

A-10 "Saha convinced President Morrison that Teng's contract be terminated and by letter dated March 30, 1983, of which I received a copy, Teng's contract was not renewed. Teng was not in the United States at this time as he had returned to China for

the funeral of a family member."-- Teng returned to office April 4, 1983, his wife was staying in Huntsville home recovering from operation during that period.

A-11 "On April 7, 1983, I did ask Teng...whether he had received his copy dated March 30, 1983 concerning his contract termination and he replied, "not yet". In fact, that was the time Teng first learned of such a letter, while not seeing it.

A-12 "In summary,...Saha obtained the termination of Teng's contract more out of personal reasons against Teng rather than Teng's professional competence."--A true conclusion of Saha's dictatorial maneuver all over student, faculty, and surpassing Dean's authority at all times--Saha was called "the notorious Dr. 'Shah' "by students.

In summation, the above dramatical narrative Affidavit by Dean, Dr. Jenkins (App. VII), has fully warranted the positive resolutions to Questions Presented, 1,2,and 3. Petitioner's tenure attainment had been consolidated in May 1980, May 1982, and May 1983, defying Saha's tort actions in undermining the retiring career of a faculty member in the environment of an Institute of High Learning. In turn, these positive resolutions mentioned above can indeed substantiate the proofs for Questions Presented, 4 and 5, with truthful findings of fact and just applications of law in depicting Lower Courts' errors, and also Appeals Courts' falsity and contradiction.

In addition, in a reiteration of the group-action proposal for election of Chairman in May 1980 (Saha was acting)

Petitioner's altruistic pledge, as exhibited on P.5 of 5 of ct. Exh. 2(Ref.Trial Exhibit File) is quoted below.

"Conclusion: In view of the above, I earnestly request that, under the approval of Vice President, Dean, Dr. Jenkins would conduct a free election for the Chairman of Computer and Information Sciences Department, so as to recognize the right as well as obligation of all faculty members as instituted by the University and other related associations, and certain Governmental organizations. To demonstrate my consistent integrity, I would rather disqualify myself for the candidacy for this election when conducted; will move in the election for Dr. Saha's front-running candidacy."

SECTION III (Cont.)

(b) A review of Transcript for Findings of Fact and Conclusions of Law (TFFCL) Reavealing Errors, Distortions, and Capricious Statements, in the order of pp.2-5 through pp.92-96: (Ref. to Transcript and Deposition File)

pp.2-5: Reviewing preceding events of the case .

pp.6-10: Teng's Resume which has been regarded relatively superior except by Saha.

pp.11-13: Teng's 1977 contract with AL A&M University as an Associate Professor, contract stipulated being subject to State Board of Education and the University Handbook of 1975 (PL.Exh.1)

pp. 13-16: Regulations on Tenure: 1975 vs. 1981 editions of Handbook State Board of Education vs. Board of Trustees. (et.al, Sect. 1 (d)

pp. 16-18: AL A&M Univ. has Federal Land Grant, and state support.

pp.18-21: Saha's evaluation of Teng as satisfactory in 1977-78, 1978-79, and 1979-80, but, Teng and Pulsani's Memo of May 13, 1980, to Dean, complaining of Saha's mistreatment (Ct. Exh.5) was followed by Saha's first criticism of Teng (Pulusani quit),--an obvious reaction to Teng/Pulsani's memo. On p. 19, Judge's stated: "It is interesting to note that, Teng's ambition at that time for"." a Ph.D program were concurred by Saha.,"--Judge's misconstrued context in missing a word "developing".

pp.22-23: As a reaction to Faculty's Complaint of Saha, May 1980,"..serious friction and discord was developed between Saha and Teng"--also Mr. Pulusani and Dr. Shiva (quit).

pp. 24-26: Teng's May 1, 1981 Rebuttal of Saha's Critical Evaluation, was strictly

following Grievance Procedure.

pp.27-28: Saha criticized faculty for lacking further education and development, whereas, Saha sent himself alone for DEC's new computer training, -- i.e. a typical dictator's caprice.

pp.28-30: Saha's observation of Teng as non-complete dedication, --no specific instance to mention.

pp.31-32: Saha's unfair treatment of Teng's Summer of 1980 with discriminatory pay, much less than the already existing rate.

pp. 33-34: Saha requested for Teng's salary reduction for September 1981 for late returning to school without missing a single class. Whereas, Saha missed 4-week classes in January - February 1981.

pp.35-36: On Teng's rebuttal to 1980-1981 evaluation (Ct.Exh.2,p.5 of 5) with the proposal for election of Chairman, adding

his pledge for self-disqualifying from candidacy and moving Saha as a front-runner. On p. 36, "Court considers the proposal to V.P. Frazier via Dean Jenkins to be an attempted intrusion in the administrative affairs of University which he had no right to seek. And this May 1,1981 Memo itself by Teng cast him in suspect status as a faculty member of the University" --A despise of Academic Freedom Activity by the Court. (similar proposals to University Senate for years) pp. 37-38: Faculty Evaluation of 1981-82: Saha's criticism of Teng and Teng's response are instituted in University Policy also laid out in the Evaluation form (Ct.Exh.7)--Saha's allegation of student-complainers of Teng's teaching were actually his set-up. Saha's critical evaluation of Teng; Court finds notations: "Teng was placed under probation during this evaluation period."--That is a real prejudice. The court also notes, Teng was "unsatisfactory" (by Saha's personal

prejudice). Dean's comment: Dr. Teng has been given a vote of confidence through continued employment.

pp. 39-41: The Court finding: Regarding 1980-81 academic year, Teng missed the commencement Drs. Jenkins, Saha, Frazier conferred concerning Teng's performance review, as called for by Saha.--a conspiracy conference against Teng.--all Saha's alleged complainers were never identified, let alone any testimonies. V.P. Frazier requested Teng's Transcript for Saha--implementing the transcript conspiracy, in undermining Teng's retiring job.

pp. 42-44: It is evident now, the unjust decision will be made regardless how authentic the transcript was; as President Morrison testified (p.68), Teng's transcript is clear and clean, (Dft Exh. 9). The 1981 Summer Session observation on Teng with undue criticisms

Saha wrote to Teng: "I recommend strongly that you re-evaluate your point of reference (a harassment)". Court notes: "This Def. Exh. 9, places Dr. Teng on warning. Whereas, President testified, that Summer Session teaching is not even accounted for evaluation, then it is another capricious act by Saha and Court.

pp.45-46: Def.Exh.4: Saha's criticisms of Teng for his absence from Faculty Conference. Aug. 1980--a reiteration.

pp.47-48: University Handbooks 1975 edition vs. 1981 edition:--reiterated.--after failing 1975 edition requirement of Dean's endorsement, trying to apply the 1981 edition while over-conscientiously complying with the 1975 edition is a caprice. Above all, Affidavit of Dean Jenkins (subsection (a), (A-4) proved forgery of his endorsement--a fraud committed apparently by none but Saha.

pp.47-53: University Policies reiterated. (referring to PL.Exh.2,4&14 in essence)

pp.54-58: Concerning Saha's first request of Feb. 24, 1982 to terminate Teng's contract, Dean's Affidavit (App.VII) depicted the evidence of forged endorsement, see the preceding subsection III(a) et al. App VII. It is totally dogmatic that "the Court considers it apparently joint recommendation by Saha and Dean, also considers, it is highly unlikely that Dr. Jenkins placed his signature without circling "approved" or "disapproved" (Dr. Jenkins even gave the reason why he signed without encircling "approved" as having reviewed but not approved it). It is persistent prejudice that "the Court draws reasonable inferential finding from the evidence, to the contrary that Dr. Jenkins in fact both signed and approved it."--Barely false

pp.59-64: Court Exh. 9: Dr. Frazier's conference, a hearing for Teng: as a result of AEA's, inquiry. This administrative hearing for Teng conducted by V.P. Frazier (March 9, 1982) in presence of Drs. Saha and Jenkins. In the hearing, Dr. Saha's vague criticisms/false accusations were

reiterated. But, V.P. Frazier did not approve Saha's request by extending Teng's "Probation" to save Saha's face. (Letter of March 22, 1982), Under 'probation' 1982-1983, as Dean said, 1983 faculty evaluation is to determine Teng's contract, not by Saha's personal hatred.

Court notes, "interesting enough, Dr. Teng received the letter without dispute, and made no protest, no demand whatever for an appropriate hearing."--This is evidence of Lower Court caprice in letting Defendant University to withdraw its hearing for Teng while urging Plaintiff-Teng to request for another hearing--it's AEA's view that Teng could not ask for a hearing upon the victory of a hearing,--having not the effect of termination from a warning notice.

pp.65-66: Saha's first request of February 24, 1982, as proven, containing forgery (see III (a); App.VII) would be

a demonstration of the Court's greatness,
if the court became outrageous to
the tort actions of forging Dean's
encirclement of "Approved", also a relie
for tort-victim, Teng.

pp.67-68: Regarding emergency leave of
Teng and its approval, --not relevant.

pp.69-70: (PL.Exh.7) Non-renewal notice
of the March 30, 1983 letter was no
received by Teng until April 11, 1983, a
so stamped. (On April 7, Dean inquired o
the receipt. Teng replied "Not Yet,"
The only evidence of delivery is Apri
7, received by Dean and April 11 receive
by Teng.

pp.71-72: (PL.Exh.7) Court notes "Dr.
Jenkins and others, all except Ten
received copies of the notice "promptly"
(Judge created "promptly" instead o
April 7, 1983). Illogically, "the Cour
does not recall with certainty the exac
evidence as to when Dr. Teng first claim
that he saw the March 30, 1983 letter."

"He testified that he may have fou
letter on his desk (when?), but h

professes not to remember"--This is a compounded distortion of Teng's testimony for April 11 receipt (learned of on April 7). The logical proofs are: (i) Teng received the only original copy on April 11, 1983; there was no other original copy. (ii) No other parties, including Dean's receipt can be evidence of Teng's receipt. (iii) No mail, nor registered mail receipt offered as evidence, let alone the lack of any testimony from a carrier. Above all, it's University's burden to show its delivery evidence. (An obviously prejudice against the old professor in midst of all sorts of undermining tort activities.)

pp.73-74: AEA attorney Battle wrote to University and obtained a hearing setting for Teng (PL.Exh.8) in May-June 1983.

Exh.8 Evaluation of Teng for 1982-83 (sixth year of teaching) by Saha together

with Teng's rebuttal, "Court: It is interesting to note that Teng's testimony, he referred to Dr. Saha as a dictator."--it is true that Saha is an evil dictator so notorious that students named him Dr. "Shah". In the hearing panel setting, Saha was designated as opponent to Teng.

pp.75-76: V.P., Dr. Hicks withdrew the hearing under Counsel Roberts' advice on May 16, 1983. Faculty Senate President, Dr. Montgomery, upon senate resolution wrote to President Morrison, urging for reconsideration of Teng's case. He stated "We depend on your sense of justice..you will proceed with dispatch to resolve this apparent injustice". Dr Morrison testified he made no response he added, he did not have to. (A perfect dictator attitude)

pp.77-78: Omit (earning record of Teng)

pp.79-80:"Court finds no evidence about Saha's incompetence, etc."--not relevant

pp.81-83: Transcript conspiracy,··· reiterat

pp.84-86: "Court finds no state law regarding tenure attainment in this case"--ignoring AL. Supreme Court Ruling of May 24, 1986 in Oden Vs. Morgan County Board of Education.[1] Justice Almon's ruling is quoted below:
"Justice Reneau Almon, who wrote the Supreme Court's majority opinion, said the court had never considered a similar case. He said the state tenure law allows a school supervisor to attain tenure after three years in a position." But Almon finally, quoted "The teacher tenure law is to be construed liberally in favor of teachers, who are its primary beneficiaries Almon wrote."

Court finds no oral attack on Teng by Saha. (Teng would rather accept oral and/or physical attacks in lieu of endangering his retiring career and security of family.)

87-89: "Court finds evidence without dispute that Teng's intemperate reports about Saha went to various University officials."--(But, Teng only submits reports to Dean, Dr. Jenkins and none else.)

pp.90-91: "Court expressly finds the factual circumstances were timely in all respects and in full and substantial compliance with the provisions in 1981 ed". (Indeed a grossly distorted finding by court: The 1981 ed. can only apply t prior contracts at no less terms).

pp.92-96: The court cited two precedent cases: (i) Board of Regents of State colleges Vs. Roth[2] 409 U.S. 564 (be cited 92 SCt 2701 to 408 U.S. 564);(ii) W.F. Stewart Vs. Bailey[4], director o Wallace School, case:556f 2d. 281

In legal search analysis, sharp contrast was discovered between Teng's case and the above Roth and Stewart cases. Roth had only the first year services, whereas Teng has served six years; Roth criticized the administration openly whereas Teng reported in group actions to Dean only. Plaintiff-Stewart was not even a decent teacher: he was alleged of drinking intoxicating

beverages on campus and also appeared intoxicated in an AEA conference on February 15, 1974; whereas Teng is a senior professor, a Christian practicing altruism; Stewart was even alleged of following and harassing a cosmetology instructor, whereas Teng was complained of teaching in 5th year by a girl student as set up by Saha, never was identified of the complainer or the course. It was later discovered, that girl student was the one for whom Chairman Saha requested to change a grade. Stewart also had resigned and given a hearing, and he criticized the Board openly. It is unbelievable that these precedent cases involving indecent undeserving teachers could possibly be used by Honorable Judge Holtom of District Court, even as a means to harm a victimized senior professor, especially by long years of meditated

tort actions of Chairman, defying Dean's authority. It is a concrete caprice of the Court in totally denying any applications of State Law to this case despite Plaintiff-Attorney's urgent Pleading for consideration (when Alabama Supreme Court case[1] decision announced May 24, 1986 While instant case being on trial.) Judge stated "there were no state laws, rules, regulations or procedures applicable to the faculty situation at Alabama A&M University". In sharp contrast with Judge's disallowing state law, Judge cited the above two precedent cases, in support of his predetermined ruling, ironically all Alabama State school cases, defying Ball's case.[7]*

Specifically on P.93, second paragraph, Court concluded "This is not an instance of a non-tenured teacher being terminated during his academic period." Unfortunately, Judge had not upheld this righteous conclusion for the Petitioner.

---

*The Ball case prevailed in same court against same Defendant.

SECTION IV Grounds For Granting the Wirt of Certiorari:

(a) Appeals Court's Errors, as Grounds I-II, in Prejudice, Falsity, and Contradiction.

Ground I: Appeals Court Erred With Severe Prejudice For Absentee-Appellee in Defying Federal Rule 56 for Summary Judgment.

Regarding the Appeal of December 14, 1986, Honorable Cortez, Clerk of Appeals Court wrote to Defendant Attorney on January 29, 1987 informing of the time-expiration for filing of Appellee Brief, and allowing an out-of-time filing. (App.VIII) On February 2, 1987, Defendant Attorney Roberts replied, electing not to file a Brief. Appellant could not but feel being prejudiced against, for the absentee Appellee should be rendered a default judgment. Since all pleadings in Appeal Brief with

supporting evidence prevailed without a single dispute from Appellee, i.e. there is no genuine issue as to material fact of counter effect to the crucial content of the Appeal. As entailed by Federal Rule 56 (a) and (c) Petitioner moved for Summary Judgment in his favor as a matter of law, while receiving a pre-anticipatory injustice.

Ground II: Appeals Court's July-August 1987 orders in Contradiction With Its earlier Judgment:

The January 4, 1986 judgment, reversing lower court's Dismissal with prudent analysis and justice applications of law, as delineated in Sect. I (e) 2. However, Appeals Court's orders of July 2 and August 27, 1987 are in sharp contradiction with the analysis and applications of law in the January 4, 1986 Judgment. The truthful findings of

fact in Dean's Affidavit (App.VII) and the trial evidence (Proceedings File Tab. 1-57 as listed in App. I; Trial Exhibits File as listed in App.II, and Transcript-Deposition, File.) depicted full proofs for Teng's tenure attainment, even beyond the level as suggested by Appeals Court Opinion (Tab. 25; et al, App.IV). The appeals Court's applications of law are specifically for Petitioner's Cause as analyzed in following: (i), (ii), (iii).

(i) Parratt V. Taylor[9] 451 U.S. 527 535, 101 S. Ct. 1908, 1913, 68L Ed. 2d 420 (1981)--"This case concerns depriving of a person's rights, privileges, or immunities secured by U.S. Constitution."

(ii) Conley V. Gibson,[5] 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 21.Ed.2d 80 (1975),--"This is a case that cannot be dismissed for failure to state a claim."

(iii) Marrero v. City of Hialeah[8] 625,

F.2d, 499, 502, (5th Cir. 1980)--"This case led the court to accept as true the factual allegations in his complaint, together with such reasonable inferences as may be drawn therefrom in his favor."

Ground III: Falsity and/or Non-applicability of Rule 25 (a)-(e): The Affirmance Without Opinion Rules are to be proven false by Pleadings in Evidence and Proofs of the Lower Court Errors in findings of fact and applications of law as narrated in SEC.III,(a),Par.A-1 to A-12 and (b) Par.PP.2-5 to 92-96,below:

"RULE 25. AFFIRMANCE WITHOUT OPINION

When the court determines that any of the following circumstances exist.

(a)Judgment of the district court is based on findings of fact that are not clearly erroneous,

(b)the evidence in support of a jury verdict is sufficient;

(c)the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d)summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(e)judgment has been entered without an error of law; and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion."

The statements (a), (d), and (e) are false because the pleadings in Appeal Brief revealing numerous Court errors, in findings of fact with distortions, as well as in conclusions of Law with prejudice, and corroborating with evidence and proofs, had been ignored in the Affirmance Decision. The statements (b) & (c) are not applicable.

In Summation: The above delineated analysis of the evidential support of Grounds I, II, and III have provided fully the genuine resolution to Questions Presented No. 5.

(b) Lower Court's Errors, as Ground IV, Showing Dictatorial Distortions, Capricious Statements, and Prejudicial Judgement.

The long, while briefed, delineated Review of Transcript for Findings of Fact and Conclusion of Law (TFFCL), as presented in the preceeding Section III (b), in an ordinally numbered groups of pages, viz. PP.2-5, PP.6-11,..., PP.92-96, for numerous, and mostly distinct instances, all with evidence referenced correspondingly therein. The truthful annotations for each group of pages, remarked distinctly the instances for Lower Court's errors, entirely obvious, or logically clear, as concrete evidence for being compounded with dictatorial distortions; capricious statements; and prejudicially judgment. The above delineations along with the documentary evidence, and circumstantial or logic proofs fully depicted each of the serious errors by the district court.

Therefore, Section III (b) revealed

Petitioner's truthful findings of fact and just applications of law which is far more than full resolution to Question Presented 4.

Section V Summarization and Conclusion

(a) Exceptionally Significant Causes of Instant Petition with Altruistic Claims: In this Petition, the Section I Preliminary Pleadings contain all basic procedure requirement. Section II Stating the Case and Issues, following the description of prior proceedings, the key issues are formulated in five (5) Questions Represented. Then, in specifically and more than fully substantiating the resolutions to Question Presented 1-5, Petitioner presents in Section II, Truthful Findings of Fact and Just Applications of Law, consisting of (a) the crucial testimony by Dean, Dr. Jenkins (App.VII); and (b) Review of Court Transcript, revealing Lower Court's errors,

compounded with distortions, capricious statement, and grossly unjust judgement, all for regorous and full resolutions to Questions Presented 1,2,3, and 4. Then Section IV outlined the consolidated Grounds I, II, III and IV, as being responsive to, and in compliance with, the pleading's content organization directive for closing with all substantive material-documentary, circumstantial evidence, and also the legal and logical proofs for Petitioner's cause.

In addition, the exceptionally significant causes for instant Petition can be dramatically briefed as follows: 1. Democracy and Academic Freedom activities verses Dictatorial Treatment by Chairman,

in manupilating President Morrison to ordering; 2. Altruism, as evidenced in a complaining letter with a proposal, verses tort actions with persistence; 3. A senior Oriental American citizen with relatively superior qualifications vs. discriminatory treatment by Chairman, Saha (Indian, an alien at the time of requesting termination of Teng's contract) and the old President, Dr. Morrison (black).

In fact, the evidence of Alabama A&M University's discrimination against Oriental American (Chinese and Koreans) faculty members is public known pure fact: A Full-bright fellow and a Princeton Institute fellow, Dr. Chan and Dr. Lee, also the 20-year experienced excellent professors, Chou, and

Chung, and many more could never be considered for one of the 50 administrative positions which had been occupied by mainly Blacks and Indians, with a few Caucasians very recently. In a vividly clear contrast, the local UAH (University of Alabama in Huntsville) has for many years been appointing Oriental Americans as Chairman and directors, e.g. Dr. Wu, Dr. Sha, Dr. Chun, and others, while being a Defendant in the Desegregation case, known by Supreme Court, verses Alabama A&M University, among the Plaintiff parties. The Lower court ignored the Progressing Academical Freedom Movement over the past 100 years, expecially the well known publications, ACADAME, Book, as cited in Authority No.12 ((a), (b),

(c) et. al) and most recent court cases, Bazemore v. Friday[13] 106 S.Ct. 3000 (1986)[14] ; Chang V. Univ. of Rhode Island 60 F.Supp. 1161 (D.C.R.I. April,4 1985) , let alone community well known evidence, and pressed Petitioner's attorney's withdrawl, consequently, a historically injustice has just been made crystally clear by the lower court. Incidently, in proving the unjust and errorous advice from Defendant Counsel, Honorable Roberts, for withdrawing the University hearing for Teng in May 1983, Petitioner has discovered many incidences of over-abusing his legal tactics. For one serious example, hardly noticable, the PL.Exh.5 and Dft.Exh.14 are identical copies of Saha to V.P.,

Dr. Hicks letter of March 10, 1983. The sharp difference is that Saha's signature was erased in the Dft. Exh. 14 copy. For this fraudulent action, Defendant Counsel, Honorable Roberts is fully responsible. Because such an erase had a crucial motive, i.e. to conceal the evidence of lacking Dean, Dr. Jenkin's, signature, as required by University regulations.

SECTION V (Cont'd)

(b) CONCLUSION: For all of the above reasons, the Petitioner respectfully requests that his Petition for Writ of Certiorari in this case should be granted.

Dated: January 22, 1988

Respectfully submitted,

Donald S. Gresko

Donald S. Gresko
Attorney for Petitioner
Office Address:
3215 East Main Street
Endwell, New York 13760
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Appendix I Listing of Proceedings File (*indicates degrees of relevancy)

Tab. No.	Description
1	Complaint
2	Summons
3	Argument in support of Motions to Discuss
4	Motion to dismiss 4-23-84
5-6	Same as above
7-8	No Tab * nor material
9	Amendment to complaint
10	Court order 1-31-85
11	Court order 2-21-85 (granting additional leave to file amendment)
12	Second Amendment with copies of University handbook
13-16	Motion to dismiss 3-16-85
17	No Tab*, nor material
18	Court order 3-25-85 (request individual University agents)
19	Court order 3-25-85, dismissal, leave for PL amend. Appendix III)
20	Second Amendment to Complaint of March 21, 1985 with Dean's Affidavit of September 24, 1984. (Appendix VII)
21*	Court order 4-3-85. Affirming 3-25-85 dismissal

Appendix I (cont.)

22	Notice of Appeal 4-24-85
23-24	Material Postmarks, etc.
25**	Appeals Court Judgment, Before Judge Fay, Johnson, and Clark. 1-4-86, Reversed dismissal against Defendant University excluding Individual Agents. (Appendix IV)
26	Bill of Cost to University and due Plaintiff, Teng
27	Court order retrial setting
28-29	no Tab*
30	Defendant Answer:First Defense, Second Defense. 1-30-86
31	Motion to dismiss or impose sanctions, January 30, 1986
32-39	No Tab.*, nor material
40	Motion to dismiss or impose sanctions, May 2, 1986
41	No Tab*
42	Court order for hearing, May 6, 1986
43	No Tab*
44	Request to Teng from Rasco, Defendant Attorney
45	Court order, May 8, 1986
46-47	No Tab*, nor material
48	Memo of authorities
49	No Tab*, nor material
50*	Court order, May 30, 1986 (Judgment without opinion) (Appendix V)

APPENDIX I (cont'd)

51-52	Listings of Exh.;Addendum to Plaintiff's Trial Issue;
*	Similar Decisions made under the Alabama Tenure Law;
*	Trial Issue Argument Summaries
53	No Tab*, nor material
54*	Clerk's Court minutes, followed by Listings of Exh.
55*	Motion for Reconsideration
56	Errata sheet, June 9, 1986
57	Notice of Appeal, July 14, 86
*	Court orders issued July 2, 87 affirmed Lower Court
*	Decision (see Rule 25) and 9-9-87 denied the petition for rehearing (57 is the last labeled Tab.#) Appendix VI Cont.

Appendix II

Listings of Hearing Exhibits with Annotations (Ref. Exhibits File, Besides Ct. Records & Transcript)

(Annotations in parenthesis)

PLTF No.	Description
1	Univ. Employment Contract (Stated under and subject to state Board of Education)
2	Univ. Faculty-Staff Handbook 1975 ed.
3	Saha to Frazier, letter 2/24/82
4	Frazier to Teng, letter 3/22/82 (Notice of Extens.)
5	Saha to Hicks, letter 3/10/83 (Missing Dean's signature) (Saha's signature is distinct in contrast with Deft. Exh.#14) *****
6	Teng to Saha, letter 3/24/83
7	Hicks to Teng, Re: letter 3/30/83(notice of terminating contract; received 4/11/83 by Teng as stamped
8	Hicks to Atty. Battle letter
9	Hicks to Teng, letter 5/2/83 (setting hearing panel)
10	Gibson to Teng, letter 5/24/83 (RE: Hearing panel)
11	Teng & Pulusani to Dean, letter 5/13/80 (RE: Complaint of Saha's mistreatment)
12	Hicks to Teng, letter 6/1/83 (Withdrawing hearing)
13	Faculty Senate Pres. Dr. Montgomery to University Pres.Morrison, letter 5/16/83 letter 5/16/83(askingfor re-

	consideration of an apparent injustice case by Seate resolution)
14	Faculty-Staff Handbook 1981 ed. (relaxed Dean's endorsement, applicable to prior contract only at no less terms)

DEFT No.

1	Transcript of Dr. Teng (Univ. Mich. & Minn.)
2	1984 Income Tax Return of Dr. Teng
3	1985 Income Tax Return of Dr. Teng
4	Saha to Teng letter 9/10/81 (RE:Univ. conference absence, proposing salary deduction as penalty)
5	Jenkins to AEA Atty. Battle letter 10/24/83 (stating he did not approve Saha's action against Teng)
6	Saha to Frazier letter 4/27/81 (Teng's performance review in faculty evaluation, the unfair criticism)
7	Jenkins to Frazier letter 7/22/77 (Recom. hiring of Teng, with high praises)
8	Memo 7/1/81
9	Saha to Teng letter 8/5/81 (RE:course outline) performance observation during summer 81, with undue criticism)
10	letter 12/2/81 (Not in file; requested)

APPENDIX II (cont'd)

11	Memo 1/19/82
12	Memo 12/14/81
13	letter 12/21/81 (The above 11-13 are not in file; Plt. request not responded.)
14	letter 3/10/83 (same as PLT #5, with erases of Saha's Signature)
15	Jenkins to Frazier letter 9/9/80 (Recommending prorated September salary deduction for earnings in TVA, which did not take effect for all absentees)
16	letter 8/4/80
17	Faculty Application of Teng

Court No.	Description
1	Teng to Judge Haltom: Attachment "Saha's forging evidence"
2	Teng to Frazier via Jenkins letter (RE: Evaluation 1980-81)
3	Evaluation 1977/78 (good evaluations of Teng)
4	Evaluation 1978/79 (good evaluations of Teng)
5	Evaluation 1979/80 (good evaluations of Teng)
6	Evaluation 1980/81 (criticism by Saha started)
7	1981-82 Faculty Evaluation, (Beginning Saha's Attack)
8	Faculty Evaluation with Attachment for 1982-83

APPENDIX II (cont'd)

9	Frazier Memo for record, March 1982 (RE: Administration hearing)
10	New Vice-Pres. G.E. Cooper to Judge Haltom, letter 5/23/86 (Teng's salaries: '81,'82,'83,'84,'85)
11	Hicks to Jenkins letter 9/13/83 (RE: Transfer of Computer Department to School of Science)
12	Announcing for Replacement of Chairman Saha, flier from Alabama A&M, May 1983 (Court disallowed submission while raising irrelevant issue about Saha's not being incompetent.)

APPENDIX III

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

District Court Orders
(Tab. 18-19)

LINCOLN TENG ,Filed March 25,1985
,
Plaintiff ,
-v- ,No. CV 84-HM-5225
,
ALABAMA AGRICULTURAL ,
AND MECHANICAL ,
UNIVERSITY, et. al. ,

Defendants Entered March 25,1985

ORDER

The above entitled civil action (in the form of Second Amendment To Complaint filed herein on March 4, 1985) is before the Court upon MOTION TO DISMISS filed in this cause by defendants RICHARD D. MORRISON, individually and as

1. By Order entered herein under date of January 31, 1985, the Court granted the then pending 12 (b) (6) motion to

dismiss of each defendant and dismissed the action with leave granted plaintiff to file amended complaint here within twenty (20) days from the date of the dismissal order if he elected to do so. On February 21, 1985, one day after the expiration of the twenty (20) day period, counsel of record for plaintiff made telephonic request to the office of the undersigned judge that he be granted additional time to file further amended complaint. This request was granted by Order of this Court dated February 21, 1985 granting plaintiff leave to file a further amendment to his complaint on or before March 4, 1985.

District Court orders filed April 2, entered April 3, 1985

ORDER

It appearing to the Court that unknown to this Court Plaintiff Lincoln

Teng on March 25, 1985 filed in the above entitled civil action his "AMENDED SECOND AMENDMENT TO COMPLAINT" prior to the entry herein of the Order of this Court rendered and entered in this cause on March 25, 1985 which granted the Motion To Dismiss of each Defendant directed to Plaintiff's Second Amendment to Complaint filed in this action on March 4, 1985 and dismissed the above entitled civil action with prejudice, it is therefore

ORDERED, ADJUDGED and DECREED that the Motion To Dismiss of each Defendant herein directed to Plaintiff's Second Amendment To Complaint is considered as refilled to Plaintiff's Amended Second Amendment To Complaint, that as so treated and considered the Motion To Dismiss of each Defendant is Granted and that the above entitled civil action is DISMISSED with prejudice and that the

costs of this cause are taxed against Plaintiff, for which let execution issue.

It is further ORDERED that as hereby modified the March 25, 1985 Order of this Court dismissing this action with prejudice is AFFIRMED.

DONE and ORDERED this 22nd day of April, 1985.

Appendix IV Appeals Court Judgement

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 85-7289

D.C. Docket No. 84-5225

LINCOLN TENG,

Plaintiff Appellant,

versus

ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY, R.D. MORRISON AS PRESIDENT, K. SAHA, AS DEPARTMENT CHAIRMAN, J.H. HICKS, AS VICE PRESIDENT, all of the said University.

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Alabama

---

Before FAY, JOHNSON, and CLARK, Circuit Judges.

APPENDIX IV (cont'd).

JUDGEMENT

This cause came on to be heard on the transcript of the record from the U.S. District Court for the Northern District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23:

ON CONSIDERATION WHEREOF, it is now here ordered and adjudeged by this court that the judgement of the said District Court in this cause be and the same is hereby, REVERSED as to the dismissal of plaintiff's suit against AL. A&M Univ. and is AFFIRMED as to the dismissal of all other defendants.

It is further ordered that defendant-appellee, AL. A&M Univ., pay to plaintiff-appellant, and plaintiff-appellant pay to the infividual defendants-appellees, the appeal to be

taxed by the Cleark of this Court.

Issued: Dec. 30, 1985 Entered:Dec.4, 1985 as Mandate Clerk, For the Court:Spencer D. Mercer

Appellant, Teng, brought this claim under 42 U.S.C.S. 1983 after being discharged as a college professor. The district court dismissed for failure to sate a cognizable claim. We reverse.

The first complaint alleged that the AL. A&M Univ. and its employees terminated Teng's employment in violation of tenure regulations and due process because he did not receive a hearing. He requested damages and a mandamus ordering the defendants to reinstate him with back pay. He also requested a declaratory judgement. Each defendant filed a motion to dismiss for failure to state a cause of aciton. Teng then amended his complaint to allege a violation of his

First Amendment rights alleging he was terminated for voicing opposition to the defendant's policies. The court granted the defendants' motions and dismissed the complaint with leave to Teng to amend. In his second amended complaint Teng alleged he was discharged based on racial discrimination and that he was denied due process when the University failed to provide him with a hearing guaranteed tenured faculty members. The defendants filed motions to dismiss which the district court granted. On the same day, Teng filed an "Amended Second Amendment to Complaint" alleging that he was incorrectly classified as a probationary employee, that as a tenured employee he was terminated without good cause in violation of 42 U.S.C.S. 1983, and that he was denied a due process hearing. The court then issued a second order after

review of the amendment and dismissed the complaint. Teng appealed. The attorney representing him moved to withdraw and the motion was granted. Teng has filed a prose brief.

Teng attacks the district court's dismissal for failure to state a claim by arguing that the defendants violated his civil rights under 42 U.S.C.S. 1983.

A Section 1983 action requires two essential elements: (1)whether the conduct complained of was committed by a person acting under color of state law; and (2)whether this conduct deprived the person of rights, privileges, or immunities secured by the Constitution of the United States. Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1980, 1913, 68 L.Ed. 2d 420 (1981).

A complaint should not be dismissed for failure to state a claim unless it

appears beyond doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle then to relief. Conely v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1975). In reviewing the dismissal against Teng, this Court should accept as true the factual allegations in his complaint, together with such reasonable inferences as may be drawn therefrom in his favor. Marrero v. City of Hialeah, 625 F.2d 499, 502 (5th Cir. 1980), cert. denied, 450 U.S. 913 (1981).

Although Teng alleged in his original complaint that he was a "probationary employee", he was also alleged that he was a tenured employee in his amended complaints. Accepting this allegation as true, he may have a property interest in his employment. Board of Regents of State Colleges, 408 U.S. at 578, 92 S.Ct.

at 2709. Cf. Sullivan v. School Board of Pinellas County, No. 84-3388, slip op. at 209, 213 (11th Cir. October 15, 1985) (non-tenured employee has neither a protected property interest nor a protected liberty interest in continued employment) the University would have been required to give him a hearing when they declined to renew his contract of employment. Board of Regents of State Colleges, 408 U.S. at 578, 92 S. Ct. at 2710. Although, it is true, as the defendants argue, that whether or not Teng achieved tenure is not a federal question, this does not preclude Teng from bringing his suit in federal court. It simply means that the federal court determination of whether or not he has tenure is governed by state law. See Sullivan, slip op. at 213-214. If he does have tenure, Teng has a property

interest in his employment and therefore a constitutional cause of action.

Teng also alleged in the second amendment to his complaint that he was discharged for impermissible reasons, "including racial discrimination." On appeal he argues that the University discriminates against Oriental Asian Americans. Although this amplification was not alleged in the many pleadings filed in the district court, the allegations of discrimination based upon one's race are sufficient to state a claim.

The defendants argue that Teng has stated no cause of action against the individual defendants. A review of his final amendment to his complaint shows that Teng has requested no relief against the individual defendants except in thier capacity as agents of the University. The dismissal of the individuals is

affirmed.

Teng has alleged a variety of actions by Dr. Saha towards him. These concern fraud and other causes of actions which sound in tort. These are not constitutional violations. Baker v. McCollan, 443 U.S. 137, 146, 99 S.Ct. 2689, 2695-96, 61 L.Ed. 2d 433 (1979)1. Therefore, the dismissal of Dr. Saha is affirmed.

We make no comment upon the merits of the case and can understand the difficulty of the district court in sifting through the numerous allegations and amendments thereto. Our holding is simply that allegations that a tenured professor was denied a due process hearing and discharged because of his race raise justiciable issue under S 1983.

The dismissal of the University is

REVERSED. The dismissals of the individuals are AFFIRMED.

Appendix V (Tab. 50)
District Court Order May 30, 1986

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA NORTHEASTERN DIVISION

LINCOLN TENG ,
Plaintiff ,
, NO.CV 84-HM-5225-NE
-V- ,
ALABAMA AGRICULTURAL,
AND MECHANICAL ,
UNIVERSITY ,
Defendant ,

ORDER

In conformity with the Findings of Fact and Conclusions of Law stated orally and recorded in open court following the close of the evidence in the above entitled civil action, it is

ORDERED, ADJUDGED and DECREED that plaintiff LINCOLN Teng have and recover NOTHING of defendant ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY, that final judgment is hereby rendered in favor of

defendant, and that the costs of this cause are taxed against plaintiff, for which let execution issue.

DONE and ORDERED this 30th day of May, 1986.

Appendix VI
(Tab.57)
Appeals Court Order July 2,1987 &
August 27, 1987

IN THE UNITED STATES COURT OF APPEALS FOR THE

ELEVENTH CIRCUIT

No. 86-7493
Non-Argument Calendar

D.C. Docket No. 84-5225

LINCOLN TENG,

Plaintiff-Appellant,

versus

ALABAMA AGRICULTURAL AND
MECHANICAL UNIVERSITY,

Defendant-Appellee.

Appeal from the United States District
Court the Northern District of Alabama

(July 2, 1987)

Before TJOFLAT, HATCHETT and CLARK, Circuit Judges:

PER CURIAM:

AFFIRMED. See Circuit Rule 25.

"Costs taxed against plaintiff-appellant."

Judgment Entered: July 2, 1987
For the Court: Miguel J. Cortez, Clerk

APPENDIX VI (cont'd)

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 86-7493

LINCOLN TENG,

Plaintiff-Appellant,

versus

ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Alabama

---

ON PETITIONS FOR REHEARING AND SUGGESTIONS OF REHEARING IN BANC

(Opinion July 2,1987,11 Cir.198 F.2d). Before TJOFLAT, HATCHETT and CLARK, Circuit Judges.

PER CURIAM: The petitions for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the suggestion of Rehearing In Banc are DENIED.

Appendix VII

Dean, Dr. Jenkins' Affidavit (see orginal in Ct. File,Tab.20)

STATE OF ALABAMA

COUNTY OF MADISON

AFFIDAVIT

Personally came and appeared before me, the undersigned Notary Public, Joseph R. Jenkins, who, after being first duly sworn, did depose and say:

A-1 My name is Joseph R. Jenkins. I am employed at Alabama Agricultural and Mechanical University as Dean of the School of Technology. I was Dean at the time of the events which I am about to describe and am familiar and have personal knowledge of them.

A-2 During the time period 1977 through August 1983, Dr. H. Saha was Chairman of the Department of Computer and Information Sciences, a department under

the School of Technology. As such, I was Dr. Saha's immediate supervisor. Dr. Lincoln Teng was a faculty member in The Department of Computer Sciences.

A-3 Over the years, Dr. Saha and Dr. Teng did not get along well with each other. On numerous occasions, Dr. Saha chastised Dr. Teng and each occasion Dr. Teng defended himself.

A-4 In February 1982, Dr. Saha requested that I request my superior, Dr. Leon Frazier, Vice President for Academic Affairs of Alabama A&M, to recommend that Dr. Teng be terminated at the end of the Spring 1982 semester. I did not agree with Dr. Saha's request and advised him that he could go directly to Dr. Frazier. By letter dated February 24, 1982, Dr. Saha did write Dr. Frazier requesting Dr. Teng's contract be terminated. My

signature appears on this letter over my name as having reviewed it, but I did not encircle the word "approved" and I do not know who circled it. I did not approve Dr. Saha's request. I later received a copy of a letter from Dr.Frazier dated March 22, 1982 to Dr. Teng advising Dr. Teng that it was the intent of the office of Academic Affairs not to renew his contract after May 1983. I was not in any way consulted on this matter by Dr. Frazier. Dr. Saha, in some manner, convinced Dr. Frazier to go along with his request.

A-5 This was not the only time I had disagreed with Dr. Saha regarding Dr. Teng's abilities. Dr. Teng holds three (3) Masters Degrees and a Ph.D., but in recent years Dr. Saha only assigned him

basic level computer programing courses rather than the higher level analytical courses. Dr. Teng was in my opinion qualified for and capable of teaching those courses.

A-6 I had the responsibility of reviewing Dr. Saha's faculty evaluation given of Dr. Teng. The evaluation and observations were not all justifiable or fair. Dr. Teng usually exercised his right to respond to these criticisms and Dr. Saha reacted in a non-professional and resentful manner each time. From my observations, many of Dr. Saha's criticisms were personal "criticisms" of Dr. Teng not related to his employment on the faculty. Dr. Saha just didn't like or get along with Dr. Teng.

A-7 In my capacity as Dean, I received complaints from students and faculty members regarding other faculty members.

I have received complaints about both Dr. Saha and Dr. Teng. These complaints never led me to recommend that Dr. Teng's employment be terminated. Other annoyances did lead me about August 1983 to recommend that Dr. Saha be replaced as Chairman of the Department of Computer Sciences. Since then, however, the Department of Computer Sciences has been transferred from the School of Technology to the School of Arts and Sciences, and Saha is no longer under my supervision.

A-8 On or about March 10, 1983, Dr. Saha requested me to endorse a letter addressed to Dr. J.H. Hicks (who had replaced Dr. Frazier as Vice President for Academic Affairs) again requesting Dr. Teng's contract termination. I sent the letter back to Dr. Saha without my signature, informing him that I did not interpret Dr. Frazier's letter as meaning

Dr. Teng would automatically be terminated. (1983 Spring Semester faculty evaluation included Dr. Teng's). Dr. Saha then sent the letter to Dr. Hicks who informed Dr. Saha that he would not honor his letter without the dean's signature. Dr. Saha then proceeded to take the matter directly to Dr. Morrison, President of A&M.

A-9 Dr. Saha somehow or other convinced President Morrison to interpret the March 22, 1982 letter to mean that Dr. Teng was to be terminated. Dr. Morrison called me and Dr. Hicks to his office and asked Dr. Hicks to bring along Dr. Teng's transcripts. Dr. Morrison observed that some grades were handwritten rather than typed. Dr. Morrison told me to tell Dr. Teng that he should have official copies of his transcript sent to the Vice President for Academic Affairs

immediately. Dr. Saha had evidently accused Dr. Teng of having made changes to his transcript in order to originally get his position at the University. I requested Dr. - Teng to get these transcripts sent directly to Vice Presidents Hicks' Office. " I later was informed that this had been done.."

A-10 Dr. Saha convinced President Morrison that Dr. Teng's contract be terminated and by letter dated March 30, 1983, of which I received a copy, Dr. Teng's contract was not renewed. Dr. Teng was not in the United States at this time as he had returned to China for the funeral of a family member.

A-11 On April 7, 1983, I did ask Dr. Teng in the school hallway whether or not he had received his copy of the letter dated March 30, 1983 concerning his contract termination and he replied, "not yet."

A-12 In summary, from my observations, Dr. Saha obtained the termination of Dr. Teng's employment with Alabama A&M University more out of personal reasons against Dr. Teng rather than Dr. Teng's professional competence.

JOSEPH R. JENKINS
Dean, School of Technology

STATE OF ALABAMA

COUNTY OF MADISON

Sworn to and subscribed before me this 24th day of September, 1984.

NOTARY PUBLIC

Appendix VIII

Supreme Justice's Order

SUPREME COURT OF THE UNITED STATES

No. A-432
LINCOLN TENG,
Applicant,
v.
ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY

ORDER FURTHER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of the applicant,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, further extended to and January 25, 1988.

Associate Justice of the Supreme Court of the United States

Dated this 16th day of December, 1987.

Appendix VIII(cont'd)

WATTS, SALMON, ROBERTS, MANNING & NOOJIN
ATTORNEYS AT LAW

P.O. Box 287

Huntsville, Alabama 35804

February 2, 1987

Honorable Miguel J. Cortez

Clerk, 11th Circuit

United States Court of Appeals

50 Spring Street, S.W.

Atlanta, Georgia 30303-3147

Re: No. 86-7493

Teng v. Alabama A&M University

Dear Mr. Cortez:

We appreciate your communication of January 29, advising that the time for filing of the Appellee's brief has expired.

The Appellee has elected not to file a brief. The Appellee is aware that the submission will be made on the record and

the Appellant's brief only.

We are returning herewith the record on appeal in two volumes.

Respectfully yours,

WATTS, SALMON, ROBERTS, MANNING & NOOJIN